THE HON'BLE SRI JUSTICE C.V. RAMULU

Thursday, 22nd June, 2006

W.P.No.1571 of 2003

Between:

BHEL Anusandhan Vikas Employees
Mutually Aided Cooperative Housing
Society Limited, having its Registered
Office at Vikasnagar, Hyderabad-93,
Represented by its Secretary-P.Janardhan … Petitioner

and

S. Mahammed Shafeeq Ahmed,
and 2 others … Respondents

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ORAL ORDER:

Petitioner No.1 is the BHEL Anusandhan Vikas Employees Mutually Aided Cooperative Housing Society Limited, Hyderabad. Petitioner No.2 is Board of Directors of the said Cooperative Housing Society. Respondents 2 and 3 are the Registrar and District Cooperative Officer, A.P. Mutually Aided Cooperative Societies and Sub-Committee of the said Cooperative Housing Society, respectively. Respondent No.1 is one of the members of the society.

Respondent No.1 raised a dispute before the Cooperative Tribunal at Hyderabad

being aggrieved by fixing the seniority of members for allotment of houses in the respective slots (A,B and C categories). The case of the 1st respondent was that he joined as a member of the 1st petitioner-society on 26-12-1991. He applied for allotment of 'B' type house (supervisor's category) and the Society in pursuance of the Circular dated 26-4-1993 demanded Rs.16,000/- as initial payment for allotment of house. By the subsequent Circular dated 20-5-1983, the amount of Rs.16,000/- payable by the employees working in Supervisory cadre has been divided into two instalments to be paid by 15-6-1993 and 15-7-1993. Respondent No.1 paid instalments 1 to 4 within the prescribed period mentioned in the Circular. Insofar as the 5th instalment is concerned, a Circular was issued on 1-12-2000 to pay the amount on or before 15-12-2000. Respondent No.1 had paid the 5th instalment with interest at 18% and the 6th instalment was also paid within the prescribed period. Though he paid the instalments as and when demanded by the society, the society with an ulterior motive reduced his seniority to Serial No.17 through the final seniority list issued on 4-1-2002 without following the procedure and Rules. The seniority of payment of instalments cannot be taken into consideration at all for the purpose of allotment of houses, as the same is impracticable, in view of the fact that the cut-off dates have not been notified earlier to all the members of the society. The only rational procedure would be either to take the seniority into consideration or to follow the drawal of lots. Therefore, the seniority list, which has been issued by the 2nd respondent on 4-1-2002, suffers from legal infirmities and the same cannot be taken into consideration for the purpose of allotment of houses.

The said allegations of the 1st respondent herein were denied by the petitioners by filing a counter affidavit. After considering the evidence, both oral and documentary, placed before it and on hearing both the parties, the Tribunal disposed of the cases observing as under:

> "44. ELIGIBILITY FOR ALLOTMENT FOR A PARTICULAR CATEGORY:-
>
> As seen from the evidence, records and other material, Ex.B1, dated 26-4-1993 issued by the earlier society shows at para 4, that three categories, i.e., Executives, Supervisors and Workmen had been made. The payment of initial deposit was also accordingly separately mentioned for all these three categories. The subsequent bye-laws of the present society (respondent-society) at bye-law No.34 prescribes the procedure governing the allotment of plots and houses. It is clearly mentioned at sub-rules (1) to (3), the said allotment is to be made on the

basis of seniority ie., making of initial payment and the date of application as entered chronological order in the register maintained by the society. Thu, it is clear that the eligibility criterion for the particular category of house/plot ie., Executive, Supervisor and Workmen is dependent only on the basis of initial payment and on the date of original application. In this regard, the contention raised by one of the petitioners that subsequently on promotion, he became eligible to Executive category or other category that the workmen category cannot sustain, since original category alone shall be considered ie., the category to which the applicant/member is eligible on the date of application. However, it is open to the Managing Committee to consider without request only in case such plots or houses available after the allotment made to the eligible members. This shall be strictly adhered and there can be no deviation and becoming eligible on the date of allotment to different category will not clothe an employee with a right to ask for such an allotment of particular category of house.

45. II. DEFAULT IN PAYMENT OF INSTALMENT/INSTALMENTS

In some cases, it has been noticed that by way of a circular, the seniority had been disturbed for committing default in payment of instalments and though the same appears to be incorrect in view of the documents placed before us, which show that the payment had been made before the cut-off date. Whatever be the matter, the parties are governed by the bye-laws and in this regard, bye-law No.41 deals with the cancellation of allotment and it is clearly mentioned therein that any default in payment of instalments will carry interest at 18% p.a., and only after issuance of notices and in case the amount still remains unpaid will result in cancellation and not otherwise. Thus, the default in payment of instalment will only attract interest at 18% p.a. and does not automatically disqualify a member from allotment. However, as seen from the records, no such default appears in some cases excepting O.P.No.13/2002, wherein Sri M. Balakishan, the petitioner sought for a declaration that the notice issued by the respondent-society claiming interest over the default payment is null and void. Such a declaration cannot be sought for since bye-law No.41 specifies charge of interest at 18% p.a., and only member who commits default in payment of instalment, it is open to the respondent-society to claim the said instalment with interest at 18% p.a. and the member shall pay the said amount. However, we agree and as we have already observed that on such payment of instalment with interest, the original seniority shall continue and the same cannot be disturbed and the same is also in consonance with the letter and spirit of the bye-laws including bye-law No.41 and bye-law Nos.1 to 3. Thus, we hold that the action of the respondent-society in disturbing the seniority of members on the ground of default in payment of instalment is incorrect and cannot sustain and excepting charging interest at 18% p.a., the allotment does not become null and void nor it would result in the disturbance of the seniority of the member.

48. It is specifically admitted in pleading and in the evidence of RW-1 that no allotment had been made by the date of filing of the petition before this Tribunal. Thus, we see no inconvenience or damage muchless irreparable damage that can be caused to the members. It is in the interest of the society and also welfare of members of the society that we see just and proper to set aside all the resolutions, notices and other circulars, which are totally repugnant to the bye-laws of the society as well as against the letter and spirit of the notification, bye-laws, rules and common law."

From the above, it is clear that the Tribunal proceeded on the footing that the parties

are governed by the bye-laws of the Society and bye-law No.41 deals with the cancellation of allotment, wherein it is clearly mentioned that any default in payment of instalments will carry interest at 18% per annum and only after issuance of notice and in case the amount still remains unpaid, it would result in cancellation. That means, it does not have any affect on the seniority of a member. Either the plea of the petitioners or the plea of the 1st respondent was taken into consideration for the purpose of fixing up of seniority. On the other hand, the Tribunal felt that the payment of instalment need not be taken into consideration and the only criterion is the payment of interest at 18% per annum over the delayed payment or cancellation in default of payment and the delayed payments, if any, will not have any effect on the seniority. This seems to be not correct and the Tribunal has not examined Bye-law No.34(3) of the Society. The petitioners herein have categorically asserted that a formula has been evolved for implementation of the bye-laws for preparing the seniority list and the seniority list has been prepared as per the formula, which reads as under:

Payment of seniority order	Year/No.of instalments paid before cut-off dates
I	1993 / 12
II	1995 / 12 + 1993 / 11
III	1995 / 11 + 1993 / 10
IV	1995 / 10 + 1993 / 9
V	1995 / 9 + 1993 / 8 So on and so forth

This method adopted by the society is within the parameters of law. Bye-law No.34(3) of the Bye-laws of the Society, reads as under:

> **"34. PROCEDURE GOVERNING ALLOTMENT OF PLOTS/HOUSES TO MEMBERS:**
>
> 1. and (2)……
>
> 3. When the total number of plots/houses is equal to the total number of applications from members, the plots/houses shall be allotted to each member. The Board of Directors shall prepare a seniority list of all the members, who have paid all instalments for development & construction charges as decided by the committee based on (1) Seniority of payment of instalments (2) Service in BHEL (R&D) (3) Service in BHEL and (4) Date of birth (5) Draw of lots where other conditions match. Mutual exchange of plots/houses between the members may be allowed by the Board.

4. to (12)……"

As seen from the above, the bye-laws contemplate seniority of payment of instalments, service in BHEL (R&D), date of birth and by drawal of lots, where other conditions match for allotment of houses. It is not the case of the 1st respondent that this procedure was not followed. On the other hand, the petitioners herein categorically asserted that this method is followed, as noticed above and fixed the seniority. Therefore, the only conclusion that can be reached is that the procedure as to fixing of seniority as per Bye-law No.34(3) of the Bye-laws of the Society has been followed by the writ petitioners. The Tribunal simply examined Bye-law No.41 i.e. collecting interest at 18% per annum over and above due amount, for the delayed payment and nothing else, but the seniority cannot be decided on that factor. I am of the considered opinion that the Tribunal has not considered the issues involved in the case properly and proceeded on the footing that the seniority method adopted by the Society is not permissible under the law, without examining Bye-law No.34(3).

Further, at paragraph-48 of its Order, the Tribunal noticed that no allotment had been made by the date of filing of the petition before it. May be, that is true. But, as on the date of passing of the Order, all the members of the society were allotted with the houses, which they are entitled to as per their eligibility i.e. A,B and C categories, and they have occupied the houses and living therein. Even the 1st respondent was allotted with 'B' type house as per his eligibility. Even if the seniority is fixed properly, probably he was entitled for choosing a house of his choice in 'B' category itself. In view of the fact that the Tribunal has not properly considered the matter, I am satisfied that the Society has properly considered the seniority criterion as per Bye-law No.34(3). Now, even according to the 1st respondent, he has already been allotted with 'B' type house for which he is entitled to. Therefore, at this stage, if any order is passed directing to prepare the seniority list afresh, it would amount to opening of pandora's box and disturbing the occupancy of all the members, who were allotted with 'B' type houses. In the interest of justice and in the welfare of the members of the society, the impugned Order is liable to be set aside and is accordingly set aside. However, the allotment made in favour of the 1st respondent shall not be disturbed.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

22-6-2006

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